

EXHIBIT E

Deposition of Christopher Hull

O'Donnell/Salvatory, Inc. v. Microsoft Corporation

December 29, 2021



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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

O'DONNELL/SALVATORI, INC., an)	
Illinois corporation,)	
)	
)	
Plaintiff/Counterclaim)	No. 2:20-cv-00882-MLP
Defendant,)	
)	
v.)	
)	
MICROSOFT CORPORATION, a)	
Washington corporation,)	
)	
Defendant/Counterclaim)	
Plaintiff.)	
)	

REMOTE VIDEOCONFERENCE DEPOSITION UPON ORAL EXAMINATION
OF
CHRISTOPHER HULL

7:33 A.M.
December 29, 2021
(All participants appeared via videoconference.)

REPORTED BY: Laura Gjuka, CCR #2057

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REMOTE APPEARANCES

FOR THE PLAINTIFF (via videoconference):

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FOR THE DEFENDANT (via videoconference):

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1 CHRISTOPHER HULL, witness herein, having been
2 duly sworn by the Certified
3 Court Reporter, testified
4 under oath as follows:
5

6 EXAMINATION

7 BY MR. LORBIECKI:

8 Q. Good morning, Mr. Hull. How are you?

9 A. Very well.

10 Q. Good.

11 A. How are you doing, Mr. Lorbiecki?

12 Q. Doing alright. You're aware that the purpose of
13 today's session is to depose you in the case of
14 O'Donnell/Salvatori Music versus Microsoft, correct?

15 A. Yes.

16 Q. Okay. Have you ever been deposed before?

17 A. I have not.

18 Q. Have you ever testified in court before?

19 A. Yes, I have.

20 Q. Now, you're aware that the oath that you were
21 just given has equal gravity to that if we were all
22 appearing in court; is that fair?

23 A. Yes.

24 Q. Now, in your deposition I'm going to be asking
25 you questions. You'll be answering them under oath.

1 this report.

2 Q. Are these royalty statements that were provided
3 to you as having originated with Sumthing Else?

4 MR. ANDERSON: Objection, vague and
5 ambiguous.

6 A. No, these are royalty statements that would have
7 been -- I don't know where they originated, but they
8 were prepared and rendered to ODS, is my understanding.

9 Q. How do you have that understanding?

10 A. Because many of these payments reconcile to the
11 payments that Ms. Boschan represented in her report.

12 Q. Do you have any independent basis? For
13 instance, did you review the GL account referred to in
14 Column S in order to assure the payments were made?

15 A. No.

16 Q. I'm sorry, I didn't catch your answer.

17 A. No.

18 Q. Did you check the invoice references as they are
19 set out in Column T?

20 MR. ANDERSON: Objection, vague and
21 ambiguous.

22 A. No.

23 Q. What does Column Q, "Object Key," the heading to
24 Column Q, "Object Key," mean?

25 A. I do not know.

1 MR. ANDERSON: Objection, lacks
2 foundation that he used any interpretation of clearing
3 date in his report.

4 A. I did not reference that. I don't know the
5 answer to your question.

6 Q. So is it fair to say that you would not rely on
7 the information in Column N to prove that payment was
8 made to ODS?

9 A. I don't know. I don't know what -- I didn't
10 rely on it in this report.

11 Q. Do you have any independent information to
12 demonstrate that each of these payments were in fact
13 made?

14 MR. ANDERSON: Objection, asked and
15 answered twice already.

16 Q. (BY MR. LORBIECKI) You may answer.

17 A. I think the period -- the vast majority of these
18 represented payments for the time period that coincides
19 with the information set forth in the Boschan report
20 reconcile, and that independently confirmed that these
21 payments were in fact made for the periods for which the
22 data overlaps.

23 Q. And that's the complete extent of proof that you
24 have that payments were made?

25 A. That, and the existence of the royalty

1 statements and the fact that this report indicates
2 payments to have been made. I am accepting that.

3 Q. I'm going to refer you back to your Exhibit 1,
4 your report. And, again, we're still on page 6 thereof.

5 A. Got it.

6 Q. You list 147 documents, but unlike the preceding
7 documents, you don't list Microsoft control numbers.

8 MR. ANDERSON: Is that a question?

9 Q. (BY MR. LORBIECKI) Do you know --

10 MR. LORBIECKI: I'll finish in a second.

11 MR. ANDERSON: Okay. Thank you.

12 Q. (BY MR. LORBIECKI) Do you know the control
13 numbers of those documents? Do you know that they were
14 produced or Bates stamped?

15 MR. ANDERSON: Objection, compound.

16 A. As we're sitting here right now, I do not know.

17 Q. In No. 6 you reference the Appendix A to this
18 report, "WC Music Data." What was the source of
19 Appendix A?

20 MR. ANDERSON: Objection, vague and
21 ambiguous.

22 A. I presume it was prepared by Warner Chapell.

23 Q. It doesn't -- I'm looking at the rebuttal
24 Schedule A. I'm sorry -- yes. Is that the Appendix A
25 referred to?

1 least that's what I heard.

2 MR. LORBIECKI: 7:30. You're right. I
3 apologize, Peter.

4 MR. ANDERSON: No, no need to apologize.

5 MR. LORBIECKI: You're right, 7:30.

6 MR. ANDERSON: So back at 9:10?

7 MR. LORBIECKI: Yes, 9:10.

8 MR. ANDERSON: Okay.

9 (Short break taken.)

10 Q. (BY MR. LORBIECKI) Let's turn to page 8 of
11 Exhibit 1, your report. Specifically, I want to -- you
12 were gracious enough to provide us with a thumbnail
13 overview of ASCAP at page 8.

14 A. Uh-huh.

15 Q. I wanted to ask you, how does a work come to be
16 registered with ASCAP?

17 A. The music publisher would register the works.

18 Q. And isn't it in fact the case that ASCAP has a
19 security system in place so that once a publisher
20 registers a work, it's only the publisher who can change
21 the attribution, both to the writers and to the
22 publisher?

23 A. I do not know that.

24 Q. Have you done registrations for any of your
25 clients?

1 A. No. No. I'm not a music publisher. I'm a
2 royalty accountant.

3 Q. Are you familiar with the registration process?

4 A. Not directly.

5 Q. Do you know what a cue sheet is?

6 A. Yes.

7 Q. What is a cue sheet?

8 A. It's a listing of music utilized in an
9 audio-visual production.

10 Q. I'm going to set out my understanding of what
11 occurs in an ASCAP registration and payment, and to the
12 extent that you disagree with me, I'll ask the question,
13 how is it that you disagree or how have I gotten it
14 wrong?

15 So as I understand it, you stated, and I
16 agree, that the publisher has the responsibility to
17 register a work. At that point, ASCAP has two different
18 ways to find out who is entitled to payment for
19 performance of the work. One of the ways is its
20 independent investigation arm whereby it compares things
21 that are, say, posted on the web with what it knows as
22 the form of a work. And the second way is by means of
23 cue sheets that are provided by the publisher to show
24 where the work has been performed. Is your
25 understanding similar to mine?

1 MR. ANDERSON: First, there's an
2 objection that counsel has misstated the witness's
3 testimony.

4 Q. (BY MR. LORBIECKI) Mr. Hull?

5 A. Yes.

6 Q. Is your understanding similar to my own?

7 A. I don't think that the music publisher provides
8 the cue sheets to ASCAP. I think the company that
9 produces the audio-visual work does that because they're
10 the only people in the world who will know what music
11 got used.

12 Q. So once ASCAP has a cue sheet, what does it do
13 with the information in the cue sheet?

14 A. It should utilize the cue sheet to report
15 royalties.

16 Q. And how does it use the cue sheet to report
17 royalties?

18 A. It should represent the report royalties to the
19 publishers set forth therein.

20 Q. Is it the case that, for instance, a particular
21 type of performance has a mechanical royalty that
22 attaches to it so that ASCAP is aware of how much to
23 charge for the performance?

24 MR. ANDERSON: I'm sorry, objection,
25 argumentative.

1 A. Would you mind restating the question?

2 Q. Let me ask it in a different fashion. How does
3 ASCAP reckon the royalty that is due for a performance?

4 A. It would rely on the cue sheets and whatever the
5 registrations are.

6 Q. How would it determine the amount due for a
7 particular performance?

8 A. ASCAP, as any PRO, has algorithms and
9 methodologies for attaching financial earnings to a
10 song.

11 Q. If you were asked to audit ASCAP's distribution
12 of money, how would you determine whether ASCAP sent the
13 right amount of royalty to either of the publisher or
14 the performer?

15 MR. ANDERSON: A performer?

16 A. I've never been asked to audit ASCAP or any PRO.
17 I do a considerable amount of work on behalf of
18 songwriters, auditing music publishers, but I've never
19 been asked to audit a PRO.

20 Q. On the same page of your report you speak of
21 SoundExchange. SoundExchange -- does SoundExchange
22 administer its obligations with regard to these licenses
23 in the same or a very similar fashion to ASCAP?

24 MR. ANDERSON: Objection, vague and
25 ambiguous, lacks foundation, calls for speculation.

1 Q. (BY MR. LORBIECKI) Well, let me ask it to you
2 differently then. How would you distinguish how ASCAP
3 distributes royalties from how SoundExchange distributes
4 royalties?

5 MR. ANDERSON: Objection, vague and
6 ambiguous.

7 A. I think that the SoundExchange is specific in
8 their allocation of royalty earnings. Those royalties
9 are triggered pursuant to United States copyright law
10 and paid by digital services who account to
11 SoundExchange at a statutory rate and they report actual
12 usage. And SoundExchange prepares its distribution to
13 the copyright owner and the artist who perform or own
14 that master recording.

15 Q. How is that different from how ASCAP determines
16 who is entitled to royalties?

17 A. ASCAP has their own methodology for
18 determining -- their own rules and methodology for
19 determining financial compensation. The allocation to
20 the publisher and the writer is very similar to
21 SoundExchange. They're basically a 50 percent split,
22 ASCAP going 50 percent to the publisher, 50 percent to
23 the writer; SoundExchange going 50 percent to the
24 copyright owner, 50 percent to the performing artist.

25 Q. Would a single performance result in liability

1 to ASCAP and to SoundExchange simultaneously for that
2 performance?

3 MR. ANDERSON: Objection, incomplete
4 hypothetical.

5 A. What is the venue of the performance? What type
6 of performance is it?

7 Q. Let's put it on Pandora.

8 A. Okay. Pandora would have two liabilities, one
9 to ASCAP and one to SoundExchange.

10 Q. So theoretically is it possible that those
11 royalties would be ultimately owed to four distinct
12 parties, that is to say, the publisher, the writer, the
13 performer, and the copyright holder?

14 A. Yes.

15 Q. How does AARC fit into this?

16 A. AARC is basically blank media meant to
17 compensate copyright owners for recorded music taped
18 onto cassette tapes and CDs, that type of a thing.
19 There is a fee charged to the manufacturers of blank
20 media, and they would pay a lump sum unallocated amount
21 of money to AARC, who would then distribute it to its
22 members.

23 Q. Is it distributed then uniformly to the members?

24 MR. ANDERSON: Objection --

25 A. I don't really know. I know that -- to be

1 perfectly honest, while I've always heard of AARC, I've
2 never seen a penny of AARC royalties reported to any of
3 my clients.

4 Q. Where no cue sheet is submitted, how does ASCAP
5 determine who owes it and therefore its publishers and
6 songwriters money?

7 MR. ANDERSON: Objection, incomplete
8 hypothetical.

9 A. I don't know. That's a music publisher's
10 question. I'm a royalty accountant.

11 Q. If you were to represent a hypothetical client
12 similar to but not the same as the estate of Aretha
13 Franklin and if there was a suspicion that persons were
14 performing the works without submitting cue sheets, what
15 would you do to assure that that hypothetical client
16 would receive its due share from ASCAP?

17 MR. ANDERSON: Objection, argumentative.

18 A. In the course of a royalty audit, we look for
19 unreported usages that may occur, and we take it up with
20 either the record company or the music publisher that
21 we're auditing.

22 Q. How do you detect those sorts of events?

23 A. Various Internet research, knowledge of the
24 client.

25 Q. Has it been the case that ASCAP has come to you

1 with funds that were owed that were distinct from those
2 generated from cue sheets?

3 MR. ANDERSON: Objection, vague and
4 ambiguous.

5 A. Would you be able to clarify?

6 Q. Are you aware as to whether ASCAP has its own
7 enforcement arm?

8 MR. ANDERSON: Objection, vague and
9 ambiguous.

10 A. I believe, yes, I think they do.

11 Q. Do they monitor performances by artists where
12 cue sheets were not submitted?

13 MR. ANDERSON: Objection, vague and
14 ambiguous. I think you misspoke. But unless you want
15 me to identify it, I'll just state the objection.

16 A. Would you be able to clarify? I'm sorry.

17 Q. Let's leave it alone.

18 MR. ANDERSON: I'm not sure what that
19 means.

20 MR. LORBIECKI: I'm not going to reask
21 the question.

22 MR. ANDERSON: So is the question
23 pending or withdrawn?

24 MR. LORBIECKI: It's withdrawn.

25 MR. ANDERSON: Okay. Thank you. I was

1 unclear. Thank you.

2 Q. (BY MR. LORBIECKI) Do you see at the top of
3 page 9 in the paragraph enumerated 2, parenthesis, where
4 you've made a statement in that paragraph? Do you see
5 the paragraph is what I guess I should ask.

6 A. Yes.

7 Q. I honestly simply do not understand what that
8 paragraph means. Could you explain it to me in greater
9 depth?

10 A. "Underpayment or nonpayment of soundtrack
11 royalties," I think this is referring to Boschan
12 Schedule 3.

13 Q. Is the point that you're making in paragraph 2
14 that it is ASCAP who was supposed to be paying for
15 soundtrack royalties and not Microsoft?

16 A. These are -- this is Schedule 3 of the Boschan
17 royalty report in which she says that a percentage of
18 Microsoft's net receipts are payable to ODS, and she's
19 talking -- it's her Schedule 3.

20 Q. Okay. I just wanted to know what the paragraph
21 meant.

22 A. This is -- we're starting off, "The Boschan
23 report claims underpayments or nonpayments of the
24 following to ODS." And number one is ASCAP,
25 SoundExchange, and AARC, and then we get onto No. 2

1 talking about the soundtrack royalties, the distribution
2 of the recordings.

3 Q. Okay.

4 A. That's Boschan's Schedule 3.

5 Q. Yes. Okay. I get it now. I just did not
6 understand the paragraph.

7 A. Okay.

8 Q. So I thought I would ask. You are the author.
9 You seem the reasonable person to ask.

10 A. Very good.

11 Q. Looking now at page 10, and specifically I'm
12 looking at D, period, parens, 1, entitled "ASCAP," in
13 that paragraph, the first paragraph, referring to your
14 description of Schedule 2 of the Boschan report, you
15 disagree with the report's estimate of 124,209 as
16 underpaid in the writer's share of the ASCAP performance
17 royalties. Could you explain how you disagree?

18 A. Yes. In the first instance, as previously
19 discussed, ASCAP royalties, performance royalties, are
20 paid to the publisher and the songwriter in equal
21 50 percent shares. ODS itself is not a songwriter, and
22 so they wouldn't have standing to make collection of the
23 writer's share of royalties.

24 Q. When you say ODS is not a songwriter, is it the
25 case that ODS sold its rights to Microsoft in Exhibit 2,

1 the ICA?

2 MR. ANDERSON: Objection, vague and
3 ambiguous, argumentative.

4 Q. (BY MR. LORBIECKI) Let's do it this way: What
5 was sold in Exhibit 2?

6 MR. ANDERSON: Object to the extent it
7 calls for a legal conclusion, and the question is vague
8 and ambiguous.

9 Q. (BY MR. LORBIECKI) You may answer, Mr. Hull.

10 A. I'm looking at Exhibit 2 right now. Ownership
11 of the work was assigned to Microsoft.

12 Q. Okay. If your statement in Exhibit 1 that ODS
13 would not be entitled to royalties, how is it that ODS
14 could sell any rights?

15 MR. ANDERSON: Objection, argumentative.

16 A. The writer's shares of royalties would be
17 payable to the songwriters. ODS is a corporate entity,
18 and it's not the songwriters.

19 Q. If the work was composed by songwriters employed
20 by ODS in a work-for-hire situation, would it not in
21 fact be ODS who was the author of the song?

22 MR. ANDERSON: Objection, an incomplete
23 hypothetical, calls for a legal conclusion, and is vague
24 and ambiguous because now you're referring to authors,
25 not writers.

1 A. The writer's royalty would always be payable to
2 the writers, those employed by ODS, but not to ODS.
3 That's always how a work-for-hire works. The songwriter
4 always gets their ASCAP royalties directly.

5 Q. So in your statement that -- in your prior
6 testimony, I have at least understood it to be the case
7 that ASCAP would pay upon registration of the work; is
8 that correct?

9 MR. ANDERSON: Objection,
10 mischaracterizes the testimony and vague and ambiguous.

11 A. ASCAP would pay 50 percent of the royalty to the
12 music publisher, and they would pay 50 percent to the
13 songwriter.

14 Q. What would happen if the publisher doesn't
15 register the work?

16 A. Probably no royalties would be generated.

17 Q. In your calculations in the rebuttal to
18 Ms. Boschan's own calculations of what is owed, haven't
19 you presumed that each of the works was properly
20 registered when you relied on the ASCAP royalty
21 statements?

22 A. What I did was I took the ASCAP royalty
23 statements that Microsoft received for the publisher's
24 share and I identified what they had received for their
25 interest, their 50 percent of the pot, and whatever they

1 received is what -- is the royalty. And because there's
2 a 50 percent/50 percent allocation, that has to be
3 basically equal to what the writers get. And I think
4 that that takes case -- correctly addresses any
5 misregistration.

6 Q. What about nonregistration?

7 MR. ANDERSON: Objection, that's vague
8 and ambiguous. It's not even a complete question.

9 Q. (BY MR. LORBIECKI) What liability arises when a
10 work is not registered?

11 MR. ANDERSON: Objection, calls for a
12 legal conclusion.

13 A. My understanding of your question, sir, is that
14 what percentage would be payable on that, and I think
15 because nothing was received, nothing's payable.

16 MR. LORBIECKI: I'm going to show you
17 now what's been marked Exhibit 10. Placing that now
18 into the chat room.

19 (Exhibit No. 10 marked for identification.)

20 COURT REPORTER: I might be missing it,
21 but I don't think I have a 9.

22 MR. LORBIECKI: Let me check. You don't
23 yet have a 9. There will be a 9. It's coming. I'm
24 sorry I took them out of order, but the way this went,
25 it just seems like now is a good time to dive into 10.

1 Q. So if Microsoft elected not to file, then the
2 amount that would come to either of Marty O'Donnell,
3 Michael Salvatori, or ODS, one of those or several of
4 those entities, would be diminished by the failure to
5 file; is that correct?

6 MR. ANDERSON: Again, mischaracterizes
7 the testimony.

8 Q. (BY MR. LORBIECKI) Mr. Hull?

9 A. I believe no royalties would be generated.

10 Q. So doesn't your assumption that the publisher's
11 share of the royalties mirrors the writer's share of the
12 royalties presume that every filing was appropriately
13 made?

14 MR. ANDERSON: Objection, it's
15 argumentative. There would be no publisher share if
16 there wasn't a registration, and your client admits that
17 all the registrations on all the music, including
18 Halo Legends, was registered. So this line of
19 questioning is irrelevant, and I think you're missing a
20 fundamental point that there would be no publisher's
21 royalties if there was no registration.

22 A. I'm sorry, should I be answering your question
23 right now?

24 Q. No, I am looking at something. I'll be a
25 moment. I'm sorry. I did not mean to suggest that you

1 owed me an answer at this point.

2 In turning again to page 9, under Roman
3 numeral IV, "Rebuttal of Analysis of Findings," you made
4 the statement that, in the paragraph beginning, "In my
5 consideration for alternate calculations, I recognize
6 that ODS brought its action against Microsoft on
7 March 10, 2020." And then you set out to apply two
8 distinct statute of limitations calculations to
9 Ms. Boschan's calculations in order to diminish the
10 amount due; is that correct?

11 MR. ANDERSON: Objection, argumentative
12 as to the last point.

13 A. No, that wasn't my intent. I prepared four
14 calculations in my report. The first is what I believe
15 to be the liability. The first alternate calculation
16 was what would the liability be if ODS was correct in
17 their position. And then the second alternative
18 calculation was to determine what would the impact of
19 the six-year statute of limitations have on the amount
20 of the liability. And the third alternative calculation
21 was what would be the effect of the liability if there
22 was a three-year statute of limitations. That's what I
23 was trying to set forth.

24 Q. What is the basis for asserting that a six-year
25 statute of limitations would apply to this case?

1 MR. ANDERSON: Objection, calls for a
2 legal conclusion, and it's argumentative.

3 Q. (BY MR. LORBIECKI) Mr. Hull, what was your
4 basis for applying the six-year statute of limitations?

5 A. A written contract dispute in the state of
6 Washington.

7 Q. And where did you get that statute of
8 limitations?

9 A. In discussing with my client's counsel.

10 Q. On what basis did you apply a three-year statute
11 of limitations?

12 A. On a similar basis, on the breach of applied
13 duty of good faith and fair dealing for this state of
14 Washington law.

15 Q. Which would be the appropriate one to apply in
16 this case?

17 MR. ANDERSON: Objection, calls for a
18 legal conclusion.

19 A. I'm just -- I'm doing calculations, you know, to
20 give alternate views of the facts.

21 MR. LORBIECKI: I'm going to place
22 Exhibit 9 in the chat room.

23 (Exhibit No. 9 marked for identification.)

24 Q. (BY MR. LORBIECKI) I'm going to ask you
25 specifically to go to pages 14 through 16 of Exhibit 9.

1 and the email in Exhibit 14 shows \$2,019,000 in
2 royalties revenue for the period through 2013.

3 Q. And so it's your testimony that these numbers do
4 align?

5 A. These numbers -- they do because the 1,757,076
6 that I show is directly out of the Boschan report.

7 Q. Now, in the course of performing your analysis,
8 did you observe any proofs of payment from Microsoft to
9 ODS? And when I'm talking about proofs of payment, I'm
10 talking about sent check copies, bank wire transfer
11 documents, or other things that showed the actual
12 transference of money.

13 A. I did not see those. I saw other documents.

14 Q. What other documents would show the actual
15 transference of the money?

16 A. First off, the amounts confirmed by ODS is set
17 forth in the email that you had sent Cedar Boschan, so
18 that, I believe -- which reconciles very closely to the
19 royalty statements that accompanied those payments that
20 I referenced as well as the summary of Microsoft
21 payments to ODS. Now, on top of that, I also referenced
22 advances in royalties paid in the agreements.

23 Q. But if you take and add up the royalties in the
24 email, it doesn't amount to the same number as your
25 calculations reflect. Aren't there missing payments?

1 A. I didn't pick up every payment in the -- that
2 Excel file that you brought up before.

3 Q. So there were missing payments in the Excel file
4 that you reviewed in that email; is that correct?

5 MR. ANDERSON: Objection, vague and
6 ambiguous.

7 A. Could you repeat that? Because there are
8 payments shown in the Excel file that I didn't pick up.

9 Q. I'm not sure I understand what you mean by you
10 didn't pick them up.

11 A. I didn't reflect them in my -- I didn't give
12 Microsoft credit for having made those payments, and the
13 reason I didn't is because some of the payments in that
14 file relate to fees rather than royalties. In those
15 instances I didn't pick up the fees.

16 Q. What are NMPA earnings?

17 A. Where do you see that, sir?

18 Q. What I'm asking is what are they or are you
19 familiar with them? N, as in Nancy, M, as in Mary, P,
20 as in papa, A, as in alpha.

21 A. I'm familiar with an organization called the
22 NMPA, which stands for the National Music Publishers'
23 Association, and what NMPA payments are could be
24 anything.

25 Q. Were there any NMPA payments reflected in your

1 analysis of the Boschan report?

2 MR. ANDERSON: Objection, vague and
3 ambiguous.

4 A. I don't know if I understand the question.

5 Q. Did you see any payments paid to ODS -- did you
6 see any payments reflected from -- or NMPA performance
7 earnings reflected in the documents that you reviewed to
8 prepare your rebuttal?

9 A. I don't understand what you're asking. I did
10 not see any NMPA payments. I don't know why I would,
11 and I don't know specifically what you're referring to.

12 Q. I'm just asking if you saw any. I think you
13 just testified that you did not; is that correct?

14 A. I believe not. I don't know what you're talking
15 about, to be honest. I'd like to say that. But I'm not
16 aware of anything marked "NMPA payment."

17 Q. Under what circumstances would one receive a
18 payment, an NMPA payment?

19 MR. ANDERSON: And just to be clear,
20 you're talking about from the association, from the NMPA
21 to someone?

22 MR. LORBIECKI: That's correct.

23 MR. ANDERSON: Okay.

24 A. I'm aware -- one thing that comes to mind right
25 now is a settlement between the National Music

1 Publishers' Association and the Record Industry
2 Association of America in respect to pending and
3 unmatched songs, usages of compositions, that the record
4 companies would pay to the NMPA and then the NMPA would
5 then pay them on to the publishers. But that is limited
6 to the major record labels. Sony Music Entertainment,
7 Universal Music Group, and Warner Chapell -- Warner
8 Music Group, those are the entities that pay the NMPA
9 settlement.

10 Q. Warner Chapell did in fact represent Microsoft
11 for the Halo properties during some of the time in
12 question, did they not?

13 A. I misspoke when I said the word "Warner
14 Chapell." The payments -- the NMPA payments would be
15 made by a separate and unrelated company, which I
16 believe is a separate legal entity, the record company
17 called Warner Music Group, right? But Warner Chapell,
18 that's a separate question. That would be -- we should
19 discuss that.

20 Q. If there were NMPA payments, would they come
21 through the distributor?

22 A. No.

23 Q. I'm sorry, what?

24 A. No.

25 Q. No? How would they come to Microsoft?

1 cassette, and it'd probably be gratis usage if it was in
2 a movie theater.

3 Q. When you say gratis usage, what do you mean?

4 A. There is no theatrical royalty in the
5 United States.

6 Q. What if it's used --

7 A. Music displayed in a movie house does not
8 attract a royalty.

9 Q. What if music is played to promote the game?

10 A. Like an advertisement?

11 MR. ANDERSON: Objection -- okay. Just
12 bear with me a second -- incomplete hypothetical, vague
13 and ambiguous. I don't know what "how about" means.

14 Q. (BY MR. LORBIECKI) If music is used to promote
15 the game, is that one of the publishing revenue by
16 source that is listed under your 2019 U.S. publishing
17 revenue by source? Does it fall within one of the
18 categories?

19 A. If there's a fee that is attracted for an
20 advertisement that uses music, that would be a
21 synchronization usage.

22 Q. If the music is used for the background of an
23 audiobook, where does it fall in here? Which of these
24 categories?

25 A. Probably other.

1 Q. Could you explain that?

2 A. To be honest, I've not come across that before.

3 I'm kind of taking a guess. You're saying in an
4 audiobook where there is music playing in the
5 background. That would be, I think, probably a specific
6 license. I think that would be an "Other" usage.

7 Q. Okay. One second, please. Did you do anything
8 to -- I'm going to skip Exhibit 16 for now so our court
9 reporter doesn't worry that we've missed something
10 inadvertently.

11 Did you do anything to truth-check the
12 royalty sheets from Sumthing Else for the period wherein
13 Sumthing Else was the distributor for the Halo games?

14 A. I relied on Boschan's work.

15 Q. Were you aware that there was -- that Sumthing
16 Else went into receivership?

17 A. No.

18 Q. And were you aware that the reason for going
19 into receivership included the misreporting of revenue?

20 MR. ANDERSON: Objection, lacks
21 foundation and argumentative.

22 MR. LORBIECKI: I'm going to ask you to
23 review Exhibits 17, 18, and 19, which I'm going to put
24 up in the chat. And I'm going to point out to you that
25 large parts of each of the exhibits are, in fact,

1 redacted. I'm aware that they're redacted. I'm not
2 asking you in any way to comment on the redactions.
3 They are redacted -- I said 17 and 18? I guess only 17
4 and 18. I'd like you to review them, please.

5 (Exhibit Nos. 17 and 18 marked for identification.)

6 Q. (BY MR. LORBIECKI) Mr. Hull, did you do
7 anything to check to see that the reporting submitted by
8 Sumthing Else was accurate?

9 MR. ANDERSON: Objection, irrelevant.

10 A. No.

11 Q. Any calculations you made remain based on
12 Sumthing Else's reports of the revenue that they
13 distributed to Microsoft; is that correct?

14 MR. ANDERSON: Objection,
15 mischaracterizes the testimony. He's identified
16 multiple sources of information.

17 A. I'm sorry, could you repeat the question?

18 Q. When you calculated how much money Microsoft
19 received from Sumthing Else, did you rely on
20 Sumthing Else's reports of revenue?

21 A. Yes, I suppose indirectly I did because I relied
22 on Ms. Boschan's report.

23 Q. Let's go into page 20, wherein you assert that
24 Microsoft overpaid ODS by \$135,586. How do you arrive
25 at that number?

1 A. Let's go to Schedule 3.

2 Q. Okay.

3 A. And I'll walk you through it. There is two
4 schedules, 3A(i) and 3A(ii). 3A(i) is a calculation of
5 the royalties payable reduced by royalties paid
6 conforming to the period for which the Microsoft revenue
7 report was available. So let's turn to 3A(i).

8 Q. Okay.

9 A. And here we have a summary of the revenue as
10 categorized in the Microsoft revenue report for the
11 period from June 2010, quarter ended, flip a few pages,
12 to PDF page 41. And you'll see that the total revenue
13 generated by the various projects adds up to 1,944,000.
14 That's in the total column, the second column, and
15 numbers on page 41 of the PDF.

16 Q. Okay.

17 A. I then applied the ODS percentages as determined
18 by Boschan to come up with the prorated revenue for the
19 ODS tracks. I then applied the 20 percent ODS royalty
20 percentage, the same percentage that Boschan used, to
21 come up with the amount payable of \$279,000. I then
22 credited Microsoft with \$245,941 in payments as detailed
23 in Schedule 3A(i). And we should probably switch to
24 schedule 3A(i) for a moment, which commences on PDF
25 page 43. And if you go to PDF page 45, which is page 3

1 of 3 of this schedule, you'll see in the second column
2 of numbers \$245,941. That's how I came up with the
3 royalties paid for that period of time.

4 Q. Now, ODS did not determine how much they were to
5 be paid. That information was uniquely in the hands of
6 Microsoft. In reviewing these documents, do you have a
7 reason why overpayment occurred?

8 MR. ANDERSON: Objection -- the preface
9 is not a question, and it is actually false, but -- so
10 I'd object to that.

11 Q. (BY MR. LORBIECKI) Have you formed an
12 impression on how overpayment occurred?

13 A. I think -- we only got halfway through the
14 schedule. Do you want to go through the rest of the
15 schedule?

16 Q. Sure.

17 A. Okay. 3A(ii), which commences on PDF page 42 of
18 the file. In that schedule you'll see total receipts
19 for the period from 2002 to the first quarter of 2010,
20 which is exactly the period for which Boschan picked up
21 revenue but didn't offset any payments. So I don't have
22 revenue figures for that period of time other than the
23 Sumthing Else revenue figures which Boschan herself
24 summarized and prepared the schedule. So I'm taking her
25 numbers.

1 A. No. No. And just for clarity sake, the
2 royalties -- the revenue on which my royalty
3 calculations are based is basically the same -- it's the
4 same number -- within \$8,000 of what Boschan did.
5 That's the difference, \$8,000. We're talking about the
6 same revenue. The difference here is the payments. And
7 you see the payments that I've given credit for. I
8 don't know if those payments include the composition
9 "Reverie."

10 Q. In every instance where you gave -- no, strike
11 that.

12 In looking at Rebuttal Schedule 3A(ii) --
13 strike that as well. I apologize.

14 MR. ANDERSON: No worries.

15 MR. LORBIECKI: I'll tell you what.
16 It's early for a lunch break, yet I'd like a little bit
17 of time -- if you can eat early, that would be great,
18 but --

19 MR. ANDERSON: I can eat early, but it's
20 been an hour anyway, so if you want to take a break and
21 then resume.

22 MR. LORBIECKI: I figured there was a
23 break. I wanted to take just a little bit more than ten
24 minutes. So what I was going to suggest is if it's okay
25 with the court reporter, could we all take our lunch

1 Catherine Brumbaugh, is trying to reach Erika in order
2 to download that.

3 Q. (BY MR. LORBIECKI) I would certainly appreciate
4 any help in our getting it because if I'm understanding
5 you, everything -- that spreadsheet did not change the
6 Microsoft overpayment from the years from 2010 to
7 current; is that correct, Mr. Hull?

8 A. I think basically for the period from -- and
9 it's best to look at Schedule 3A at this point on
10 page 36 of the PDF. For the period from April 1st,
11 2010, to June 30th, 2021, I do believe that there's an
12 underpayment of \$33,077, but it's more than consumed by
13 the overpayment that existed as of March 31st, 2010.
14 And so it ends up to be a net overpayment of 135,000.

15 Q. And your schedule 3A(i) is based on that one
16 spreadsheet, correct?

17 A. Yes. And, you know, for what it's worth, it's
18 within \$8,000 of Cedar Boschan's calculations.

19 Q. So I guess what you're saying -- and I'm not
20 trying to put words in your mouth, so if I'm wrong just
21 tell me I'm wrong. But I guess what you're saying is
22 for the period for which we are missing the spreadsheet,
23 her prediction of what occurred is within 80,000 of your
24 prediction; is that correct?

25 A. 8,000.